(as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

In the present case it was argued on behalf of the defendant that the learned Judge had misapprehended some of the facts in that he had found that some measure of disadvantage was likely to continue for some years, if not permanently, whereas, apart from the small anaesthesia patch to which I have referred, there was no evidence to support this view; it was also contended that the learned Judge was mistaken in thinking that the degree of pain suffered by the plaintiff was in any way comparable with that suffered by the plaintiff in *Low Ah Tow's*[1] case; in addition, it was submitted that on any view of the matter, the damages were inordinately high and should be reduced.

In the application of principles of compensation to the imponderable items of pain and suffering and loss of amenity, the Courts seek, as far as possible, to achieve some measure of uniformity and the only way of doing this, as Romer L.J. observed in *Rushton v. National Coal Board*[4], is to consider cases which have come before the Courts in the past and see what amounts have been awarded in circumstances comparable with those in the case before the Court. It is, of course, important, as was stated, or at least implied, in *Low Ah Tow v. Yusof bin Kayab*[1], that the cases to which reference is made should be fully reported so that the facts may be properly appreciated; but provided this condition is fulfilled I am of the opinion that it is of great assistance in aiming at uniformity to examine cases where circumstances are comparable. Counsel for the defendant referred us to a number of such cases. It is true, as was pointed out by counsel for the plaintiff, that most of them were decisions given in the United Kingdom where economic conditions are different but since, in the present case, nothing has to be included for damages for prospective loss of earnings, differences of this kind are not very material.

I consider, therefore, that the cases referred to by counsel for the defendant provide valuable guidance in the present case and if they had been brought to the attention of the learned Judge he might well have reached a different conclusion. The salient fact to be borne in mind in this case is that, with the possible exception of the small patch of anaesthesia, the plaintiff is to be regarded as a person who will make a complete recovery from the injury attributable to the defendant's negligence; consequently, compensation should be limited to pain and suffering and to some temporary loss of amenity following upon the first operation. The plaintiff's injury was undoubtedly painful but, in comparison with some of the grave injuries which come before the Courts from time to time, it was a slight injury; and it is essential that some reasonable relationship should be maintained between damages awarded for grave injuries of a permanent kind and relatively slight injuries of a transient character such as the plaintiff sustained in this case. Bearing these considerations in mind, I am of the opinion that the sum of $7,500 is out of line with the amounts awarded in cases of a comparable character and, if we are to keep within the trend of the earlier decisions, the award for general damages should be very substantially reduced. I consider that, taking all relevant factors into consideration, a reasonable sum to award in this case is $4,000 which, with the addition of the special damages, makes a total of $4,981.50. I would order that the learned Judge's assessment be varied accordingly.

Taylor and **Tan Ah Tah JJ.** concurred.

Appeal allowed; No order varying order regarding costs of trial.

Solicitors: *Allen & Gledhill; L. Rayner.*

GOH AH TOO v. REG.

[C. C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) March 8, 1956]

[Singapore — Criminal Appeal No. 27 of 1955]

Criminal law and Procedure — Appeal to Court of Criminal Appeal — Grounds of appeal — Verdict "against the weight of evidence" — Inaccurate phrase — Strict compliance with statutory language essential — That "verdict is unreasonable or cannot be supported having regard to the evidence" — Court of Criminal Appeal Ordinance, s. 6(1).

Evidence — "Irrelevant, inadmissible and highly prejudicial" — References made to "secret society or gang" — Deposition of prosecution witness before Coroner — Admissibility — Direction to the jury.

In this case one of the grounds of appeal was stated to be that the "verdict of the jury was against the weight of the admissible evidence." The Court drew counsel's attention to the provisions of section 6(1) of the Court of Criminal Appeal Ordinance and to the decision of the Privy Council in **Aladesuru** v. R.[1] where it was laid down that in order to succeed an appellant must show, in the words of the statute, that the verdict "is unreasonable or cannot be supported having regard to the evidence." The Privy Council there was of the opinion that it was not a sufficient ground of appeal to allege that the "verdict is against the weight of evidence;" and that the phrase was inaccurate and could not properly be substituted for the words of the statute. Counsel then applied for leave to amend the grounds of appeal so as to conform with the words of the Ordinance and this application was granted. The Court granting the application said: *"We would like it be known, however, that in future any ground of appeal which is worded similarly to the one originally filed in this case will be struck out."*

It was argued on behalf of the appellant that various references made to "secret society or gang" in the evidence were irrelevant, inadmissible and highly prejudicial to him. It was also argued that the learned Judge had wrongly directed the jury to consider the probabilities of the circumstantial evidence regarding common intention which it was submitted was less than the high degree of proof necessary for a finding of fact.

Held: (1) the appellant must show, in the words of section 6(1) of the Court of Criminal Appeal Ordinance, that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice. In this case there was no ground upon which it could be held that there was a wrong decision on any question of law or that there was a miscarriage of justice; (2) the use of the word "probabilities" by the learned trial Judge in that part of his summing-up was only to ask the jury to consider the surrounding circumstances in arriving at their findings of fact. In considering the surrounding circumstances the probabilities of the case would be inevitably reviewed by the jury before they reached their conclusions on the facts.

Cases referred to :—

(1) *Aladesuru v. R.* (1955) 3 W.L.R. 515; 39 Cr. App. R. 184.

(2) *R. v. Fripp & Jones* (1942), 29 Cr. App. R. 6.

COURT OF CRIMINAL APPEAL.

L. Rayner for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Whyatt C.J. (delivering the judgment of the Court): — The appellant was convicted on the 30th November 1955 of the murder of one Chan Choo Yong and was sentenced to death. He now appeals from that conviction.

One of the grounds of appeal was stated to be that the "verdict of the jury was against the weight of the admissible evidence." Now section 6(1) of the Court of Criminal Appeal Ordinance (Cap. 11) reads as follows :—

"6. — (1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

In the case of *Aladesuru v. R.*[1] the Privy Council had occasion to consider the words "judgment is against the weight of evidence" which formed part of the grounds of appeal in an appeal brought under the West African Court of Appeal Ordinance the relevant section of which is in *pari materia* with section 6(1) of the Court of Criminal Appeal Ordinance and also with section 4(1) of the English Criminal Appeal Act, 1907. It was laid down by the Privy Council that in order to succeed an appellant must show, in the words of the statute, that the verdict "is unreasonable or cannot be supported having regard to the evidence." In the opinion of the Privy Council it was not a sufficient ground of appeal to allege that "the verdict is against the weight of evidence;" that phrase was inaccurate and could not properly be substituted for the words of the statute. The Ordinance gave no appeal on such ground and the West African Court of Appeal was entitled to require strict observance of its provisions, but that did not mean that in a proper case the Court of Appeal would not give leave to appeal or review the evidence if a *prima facie* case was shown that the verdict appealed from was one which no reasonable tribunal could have arrived at. In our view the principle enunciated by the Privy Council in this case is applicable to appeals under the Court of Criminal Appeal Ordinance.

In the present case, when the point was put to counsel for the appellant, he applied for leave to amend the grounds of appeal so as to conform with the words of the Ordinance and this application was granted. We would like it to be known, however, that in future any ground of appeal which is worded similarly to the one originally filed in this case will be struck out.

The first ground of appeal argued on behalf of the appellant was that various references made to "secret society or gang" in the evidence were irrelevant, inadmissible and highly prejudicial to him.

The first of such references was made when counsel for the prosecution was examining the mother of the deceased. The relevant extract from the record is set out below :—

"Q. So far as you are aware was he (deceased) a member of a secret society or gang?

A. I do not know."

We pause here to observe, first, that the question was asked in relation to the deceased and not the appellant, and secondly, that the reply was negative in the sense that the deceased's mother did not know whether or not her son was a member of a secret society or gang.

The second reference to a secret society or gang was contained in the following question put by counsel for the prosecution to the appellant's mother :—

"Q. Was your son a member of any gang or secret society as far as you know?"

Counsel who appeared for the appellant at the trial raised an objection to this question and it was never answered. According to the record the Judge intervened and asked the witness what was her son's

occupation at the time in question and she replied that he was a painter. It is clear therefore that the question put by counsel for the prosecution was effectively disallowed by the learned Judge.

The third reference to a secret society or gang was contained in the deposition of a witness for the prosecution named Chua Ah Kwang given before Her Majesty's Coroner at the inquest concerning the death of the deceased. The words complained of were as follows :—

"I do not know whether Ah Too (the appellant) is a member of Gang 329 Secret Society. He never extorted money from me."

The deposition had been put in by counsel for the defence at the trial in order to contradict the evidence of Chua Ah Kwang on another point. The interpreter who had explained the contents of the deposition to Chua Ah Kwang was called as a witness for the defence for the sole purpose of proving the deposition. According to the record, after the deposition had been proved, counsel made a formal application to the Judge to put it in, and when this was granted the whole of the deposition was admitted. It is to be observed that the reference to a secret society or gang was of a negative character. In these circumstances we are of opinion that the learned Judge made a correct decision when he granted the application made by counsel for the defence.

The situation which arose as a result of these references to a secret society or gang may be contrasted with the position in those cases in which a witness in answer to a question mentions the fact that the accused has had a previous conviction. The course to be adopted in such an event is stated in the following words in the English Court of Criminal Appeal in *Rex v. Fripp and Jones*[2] at page 8:—

"It is the duty of the Judge to call the prisoner's attention to the fact that it is within his rights to make an application for the discharge of the jury and commencement of a fresh trial, just as it is within the rights of counsel to make an application on behalf of a defended prisoner."

In the present case the circumstance fell far short of the situation which arose in *Rex v. Fripp and Jones*[2]. None of the witnesses stated that the appellant was a member of a secret society or gang. Far from applying for the discharge of the jury counsel for the defence made an application to put in the deposition of Chua Ah Kwang which contained one of the references of which complaint is made. We have already stated that in our opinion the learned Judge made a correct decision when he granted this application.

In order to succeed on the first ground of appeal counsel for the appellant must show, in the words of section 6(1) of the Court of Criminal Appeal Ordinance, that the judgment of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice. In our opinion no wrong decision of any question of law was made by the learned Judge in this case and there is no ground upon which it can be held that that was a miscarriage of justice. The first ground of appeal therefore fails.

The next point taken on behalf of the appellant concerned the evidence of Chua Ah Kwang who said that he saw the appellant stamp on the deceased as contrasted with the evidence of another witness named Goh Soo Kia who said that he saw another person stamp on the deceased with his feet. On this point it is relevant to observe that the medical evidence is indicative of the fact that more than one person stamped on the deceased. It was open to the jury to find on the evidence that more than one person stamped on the deceased; from this point of view there was no contradiction between the evidence of Chua Ah Kwang and that of Goh Soo Kia. The learned Judge not only directed the jury to make up their minds whether or not Chua Ah Kwang was an honest witness but also asked them to consider the possibility of his making a mistake in describing the actions of the appellant. In our opinion the learned Judge's summing-up on the point raised on behalf of the appellant was adequate and satisfactory.

It was also argued by counsel for the appellant that the learned Judge had wrongly directed the jury to consider the probabilities of the circumstantial evidence regarding common intention which it was submitted was less than the high degree of proof necessary for a finding of fact. In our opinion when the learned Judge used the word "probabilities" in this part of his summing-up he was only asking the jury to consider the surrounding circumstances in arriving at their findings of fact. In considering the surrounding circumstances the probabilities of the case would we think almost inevitably be reviewed by the jury before they reached their conclusions on the facts. It is important to observe however that towards the end of his summing-up the learned Judge directed the jury that it was only if they were satisfied with regard to the act alleged to have been done by, and the intention of, the appellant that they could properly find him guilty.

We find that there is no ground upon which the verdict of the jury in this case can be interfered with, and this appeal must be dismissed

Appeal dismissed.